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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,562	01/23/2002	Michael David Maguire		2463

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/11/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,562

Applicant(s)

MAGUIRE, MICHAEL DAVID

Examiner

Michael G. Mendoza

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 9-11 is/are allowed.
- 6) ☒ Claim(s) 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In claim 6, the Applicant is required to clarify to what the claim is intended to be drawn to, i.e., either the pressure-restrictor alone or the combination of the pressure-restrictor and the resuscitator. The Applicant sets forth the combination of the pressure-restrictor and the resuscitator when describing the structure associate with the resuscitator, which is inconsistent with preamble, that sets forth the subcombination of pressure-restrictor. Applicant is required to make the language of the claims consistent with the intent of the claims. It should also be noted that in considering the claims on the merits, the Examiner will consider the claims as drawn to the combination.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 8 is rejected under 35 U.S.C. 102(b) as being anticipated by Melker
5628305.

6. Melker teaches a method for providing volume-controlled manual positive-pressure artificial ventilation, comprising: providing a manually-operated resuscitator; providing a volume restrictor; selecting a predetermined configuration of the volume restrictor; and, manually operating the resuscitator, relying on the volume restrictor to determine maximum volume delivered in each breath, whereby relying on the volume restrictor while operating the resuscitator will result in delivery of substantially-equivalent volumes in each breath (col. 6, lines 56-61).

Allowable Subject Matter

7. Claims 1-5 and 9-11 are allowable over the prior art of record.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach a bellows for use in a resuscitator, comprising: a plurality of substantially rigid adjacent structural members coupled into a colligate bellow structure with a long and a short axis; and whereby a force applied to the exterior surface of the bellow structure in a direction parallel to the short axis of the bellows structure results in a decrease in volume of the fluid chamber, resulting in a dimensional decrease of the cross-section of the bellow structure.

The prior art of record fails to teach a method for providing pressure-controlled manual positive-pressure artificial ventilation, comprising: providing a pressure restrictor, having an adjustable controller; manually operating the resuscitator, relying on the pressure restrictor to determine maximum volume delivered in each breath, whereby relying on the pressure restrictor while operating the resuscitator will result in inflation of the lungs to a substantially-equivalent pressure in each breath.

The prior art of re record fails to teach a method of monitoring pulmonary compliance and/or airway resistance during volume-controlled manual positive-pressure artificial ventilation, comprising: adjusting a controller of a pressure restrictor to a minimum point at which the pressure restrictor fails to interfere with the delivery of the maximum volume specified by the volume restrictor; and making repetitive serial assessments of the ability to operate the resuscitator with delivery of the maximum volume specified by a volume restrictor with interference from the pressure restrictor, whereby development of an inability to operate the resuscitator with delivery of the maximum volume specified by the volume restrictor caused by interference from the pressure restrictor is indicative of increasing airway resistance and/or decreasing pulmonary compliance.

Art Unit: 3761

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

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MM
March 31, 2003



**WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**